



**Billing Code 4310–55**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R8–ES–2012–N117]**

**[FXES11120800000F2–123–FF08ECAR00]**

**Endangered and Threatened Wildlife and Plants; Incidental Take Permit  
Application; Proposed Low-Effect Habitat Conservation Plan and Associated  
Documents; Riverside County, CA**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Smoke Tree, Inc. (applicant), for a 75-year incidental take permit (permit); the application includes the applicant's proposed habitat conservation plan (HCP) as required by the Endangered Species Act of 1973, as amended (Act). If approved, the permit would authorize incidental take of the endangered Casey's June

beetle (*Dinacoma caseyi*) in the course of routine activities associated with the occupation, use, and maintenance of Smoke Tree Ranch, a residential and guest ranch community established in its present configuration in 1925. We invite public comment on the permit application and proposed HCP, and on our preliminary determination that the HCP qualifies as “low-effect” for a categorical exclusion under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

**DATES:** To ensure consideration, please send your written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** *Obtaining Documents:* You may request a copy of the incidental take permit application, proposed HCP, and associated documents by e-mail, telephone, fax, or U.S. mail (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Please send your requests or comments by any one of the following methods, and specify “Smoke Tree Ranch HCP” in your request or comment.

*Submitting Comments:* You may submit comments or requests for more information by any of the following methods:

*E-mail:* [ken\\_corey@fws.gov](mailto:ken_corey@fws.gov). Include “Smoke Tree Ranch HCP” in the subject line of your message.

*Telephone:* Kennon A. Corey, Palm Springs Fish and Wildlife Office, 760–322–

2070.

*Fax:* Kennon A. Corey, Palm Springs Fish and Wildlife Office, 760–322–4648,  
Attn.: Smoke Tree Ranch HCP.

*U.S. Mail:* Kennon A. Corey, Palm Springs Fish and Wildlife Office, Attn.:  
Smoke Tree Ranch HCP, U.S. Fish and Wildlife Service, 777 East Tahquitz Canyon  
Way, Suite 208, Palm Springs, CA 92262.

*In-Person Viewing or Pickup of Documents, or Delivery of Comments:* Call 760–  
322–2070 to make an appointment during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Kennon A. Corey, Assistant Field  
Supervisor, Palm Springs Fish and Wildlife Office; telephone 760–332–2070. If you use  
a telecommunications device for the deaf (TDD), please call the Federal Information  
Relay Service (FIRS) at 800–877–8339.

## **SUPPLEMENTARY INFORMATION:**

### **Introduction**

The applicant, Smoke Tree, Inc., requests an incidental take permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking Casey's June beetle as a result of minor disturbances to habitat the species uses for breeding, feeding, and sheltering. Take of Casey's June beetle would be incidental to the applicant's continuation of routine activities associated with occupation, use, and maintenance of existing residential and guest facilities at Smoke Tree Ranch, in the City of Palm Springs, Riverside County, California. We published a final rule to list Casey's

June beetle as endangered and designate critical habitat for it on September 22, 2011 (76 FR 58954). The rule became effective October 24, 2011.

## **Background**

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the “take” of wildlife species listed as endangered or threatened. Take of listed wildlife is defined under the Act as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or to attempt to engage in any such conduct” (16 U.S.C. 1538). “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). Under limited circumstances, we may issue permits to authorize incidental take of listed wildlife species, which the Act defines as take that is incidental to, and not the purpose of, the carrying out of otherwise lawful activities.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. In addition to meeting other criteria, activities covered by an incidental take permit must not jeopardize the continued existence in the wild of federally listed wildlife or plants.

## **Applicant’s Proposal**

The applicant requests a 75-year permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking Casey’s June beetles (*Dinacoma*

*caseyi*) as a result of minor disturbances to approximately 260 acres (ac) (105 hectares (ha)) of habitat the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant's continuation of routine activities associated with the occupation, use, and maintenance of existing residential and guest facilities at Smoke Tree Ranch in the City of Palm Springs, Riverside County, California. No new development resulting in the destruction of open space habitat would occur, nor would there be any new activities other than those that have occurred over the 87 years that Smoke Tree Ranch has been in existence.

Smoke Tree Ranch was originally developed in 1925 as a desert retreat for visitors and permanent residents. The entire 400-ac (162-ha) Smoke Tree, Inc., property encompasses a residential community of 93 single-family homes, a 20-ac (8-ha) guest ranch of cottages with recreation amenities, and peripheral commercial development of shopping centers and horse stables. The property also includes undeveloped open space that extends into Palm Canyon Wash and to the base of the Santa Rosa Mountains. The location of Smoke Tree Ranch is within habitat occupied by Casey's June beetle, a species adapted to desert vegetation and soil types found in Palm Canyon Wash and adjacent areas, including Smoke Tree Ranch, in the City of Palm Springs.

To minimize take of Casey's June beetle on Smoke Tree Ranch, the applicant proposes to mitigate for minor disturbance to approximately 260 ac (105 ha) of Casey's June beetle habitat by continuing to preserve approximately 103 ac (42 ha) of natural, open space habitat occupied by Casey's June beetle and preserved under existing conservation easements. In addition, the applicant proposes to conserve under new deed restrictions approximately 11.5 ac (4.6 ha) of natural, open space habitat occupied by

Casey's June beetle; this habitat is the last remaining undeveloped open space available on Smoke Tree Ranch. The applicant's proposed HCP also contains the following proposed measures to minimize the effects of routine activities to Casey's June beetle on approximately 260 ac (105 ha) of areas already developed for residential and guest ranch use on Smoke Tree Ranch, which the applicant enforces through covenants, conditions, and restrictions and through written directives to residents each year:

- Prohibition of electronic "bug zappers."
- Limitations on outdoor and swimming pool lighting.
- Use of pool covers on new swimming pools during the reproductive flight season of Casey's June beetle (March through June).
- Prohibition of pesticide, herbicide, and fertilizer use in the conservation areas.
- Prohibition of ground irrigation in open desert areas, including the conservation areas.

### **Proposed Habitat Conservation Plan Alternatives**

In the proposed HCP, the applicant considers alternatives to the taking of Casey's June beetle under the proposed action. Our proposed action is to issue an incidental take permit to the applicant, who would implement the HCP. If we approve the permit, take of Casey's June beetle would be authorized for the applicant's continuation of routine activities associated with the occupation, use, and maintenance of an existing residential and guest ranch community. The applicant's proposed HCP does not identify an alternative that would not result in incidental take of Casey's June beetle, because it is

infeasible for Smoke Tree Ranch to cease the routine operations that have been implemented over the 87 years that Smoke Tree Ranch has been in operation without constricting the day-to-day life of residents and guests, and risking impacts to property values, neighborhood desirability, guest ranch amenities, and the overall economic viability of the community.

### **Our Preliminary Determination**

We invite comments on our preliminary determination that our proposed action, based on the applicant's proposed activities, including the proposed minimization and mitigation measures, would have a minor or negligible effect on Casey's June beetle, and that the HCP qualifies as "low effect" as defined by our *Habitat Conservation Planning Handbook* (November 1996).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

- (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

As more fully explained in our environmental action statement and associated

low-effect screening form, the applicant's proposed HCP qualifies as a low-effect HCP for the following reasons:

- The applicant would continue to preserve in perpetuity approximately 103 ac (42 ha) of natural open space occupied by Casey's June beetle.
- The applicant would preserve an additional 11.5 ac (4.6 ha) of natural open space occupied by Casey's June beetle.
- No new destruction of natural open space habitat would occur.
- No adverse modification of designated critical habitat for Casey's June beetle would occur.
- No impacts would occur to any other threatened, endangered, proposed, or candidate species, nor would there be any adverse modification of designated or proposed critical habitat for any other listed or proposed species.
- Human occupation, use, and maintenance of residences, the guest ranch, and open space areas would result in the same low-intensity dispersed, minor disturbance to habitat as a result of the same routine operations that have occurred on Smoke Tree Ranch over the past 87 years.
- Injury and mortality of individual beetles resulting from human activities associated with routine operations would be minor and, with implementation of minimization measures and preservation of conservation easement areas, would be less over the 75-year permit term than what has occurred during the past 87 years.
- Historical residential and guest ranch use has been demonstratively compatible



with survival of the beetle, as some of the highest observed numbers and most consistent collections of the beetle have been made in Smoke Tree Ranch, where the largest and most protected area of remaining occupied habitat is currently found (76 FR 58954; September 22, 2011).

- The current abundance of Casey's June beetle on Smoke Tree Ranch is primarily the result of minimal past disturbance within the regulated, gated residential community; the existence of the relatively large, contiguous, minimally disturbed area dominated by native desert vegetation that the beetle occupies; and the supplemental soil moisture on site from landscaping irrigation in the residential and guest ranch areas (76 FR 58954; September 22, 2011). These existing conditions will continue to be perpetuated, and we expect the beetle will continue to be found in abundance on Smoke Tree Ranch.

Therefore, our proposed issuance of the requested incidental take permit qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1, 516 DM 6 Appendix 1, and 516 DM 8.5(C)(2)). Based on our review of public comments that we receive in response to this notice, we may revise this preliminary determination.

### **Next Steps**

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a

section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of Casey's June beetle.

### **Public Comments**

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

### **Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal

identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

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**Jim A. Bartel,**  
**Field Supervisor.**

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